

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayner
Marshall Johnson
Ken Nickolai
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner

In the Matter of a Commission Investigation of
Intrastate Access Charge Reform

ISSUE DATE: June 21, 2004

DOCKET NO. P-999/CI-98-674

In the Matter of a Universal Service
Rulemaking

P-999/R-97-609

NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

On June 4, 1998, the Commission opened Docket No. P-999/CI-98-674 to explore reforming access charges.

On April 23, 2003, AT&T Communications of the Midwest, Inc. and MCI WorldCom Communications, Inc. (AT&T/MCI) jointly petitioned the Commission to impose a procedural framework on the investigation, with special attention to investigating the Carrier Common Line Charge (CCLC).

On December 22, 2003, the Commission issued its ORDER SETTING PROCEDURAL FRAMEWORK AND SOLICITING INFORMATION. In this Order the Commission determined that it will refer its investigation into the appropriate level of the CCLC to the Office of Administrative Hearings (OAH) for a contested case proceeding. Further, the Order required parties to file comments on the specific factual questions to be referred to the OAH, required local service providers to file the calculations on which they relied to develop their current CCLCs, and requested additional information from the Department of Commerce (DOC).

On January 23, 2004, in response to the Commission's December 22, 2003 Order, the DOC submitted a table reflecting specific information for each Minnesota Incumbent Local Exchange Company (ILEC).

Comments in response to the Commission's December 22, 2003 Order regarding the scope of the issues to be referred to OAH were filed by the DOC, the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG), Sprint Communications Company LP, Sprint Minnesota, Inc. (Sprint), Qwest Communications (Qwest), Citizens Telecommunications Company of Minnesota, LLC (Citizens), Frontier Communications of Minnesota, Inc. (Frontier), Minnesota Independent Coalition (MIC), Mankato Citizens Telephone Company (Mankato Citizens), Mid-Communications, Inc. the CLEC Coalition, and AT&T /MCI.

On March 11, 2004, the Commission heard oral argument on the scope of the contested case proceeding. The Commission sought additional comments on matters related to the setting of CCLC rates.

Additional comments were filed by the DOC, the RUD-OAG, Sprint, Qwest, Citizens, Frontier, MIC, Mankato Citizens, Mid-Communications, Time Warner Telecom of Minnesota (Time Warner), and AT&T/MCI.

The matter came before the Commission on June 3, 2004.

FINDINGS AND CONCLUSIONS

I. Jurisdiction

The Commission has jurisdiction over this matter pursuant to Minn. Stat. §§ 237.12 (Service Connection between Telephone Companies) and 237.081 (Commission Investigations).

II. Background

Access charges refer to the compensation long distance companies pay local telephone companies for access to the local network to originate and terminate long distance telephone calls. Generally, in Minnesota, access charges include three components: the carrier common line charge (CCLC), switching charges, and transport charges. The CCLC is the compensation the long distance companies pay local telephone companies for access to the local loop to originate and terminate long distance calls. The local loop is the wire used to connect the customer to the local telephone office switch.

The Commission opened the current investigation to explore the appropriateness of these access charges and has, in its Order of December 22, 2003, indicated its intent to send the investigation into the appropriate level of the CCLC to the OAH for a contested case proceeding. Before making the referral, the Commission solicited comments from the parties on the specific factual issues to be referred for further development.

III. Referral for Contested Case Proceedings

The Commission affirms its December 22, 2003 ORDER SETTING PROCEDURAL FRAMEWORK AND SOLICITING INFORMATION and will refer this matter to the OAH for a contested case proceeding. The Commission will modify the December 22, 2003 Order to request that the OAH convene a prehearing conference within 60 days of the date of this Order.

IV. Issues to be Addressed

The Commission will ask the OAH to develop a record upon which to base a determination on the following:

- (i) What methodology, if any, should be used to identify the cost of local loop facilities?
- (ii) For each local exchange carrier (LEC), what are the costs of the local loop facilities?

- (iii) What constitutes a “fair and reasonable” portion of the cost of the local loop that should be recovered in the form of access charges to long distance companies for originating and terminating calls?
- (iv) Over what time frame should the carrier common line charge (CCLC) be adjusted to the “fair and reasonable” portion as determined in issue iii?
- (v) How will local rates of each telephone company be affected by changes in the CCLC?
- (vi) Should there be a process in which companies can seek a waiver if carrier common line (CCL) rate reductions cannot be implemented without rate increases that are deemed to be unreasonable?
- (vii) Should interexchange carriers be required to pass through reductions in their access costs?
- (viii) Any other issue(s) that the ALJ concludes needs to be addressed for resolution of the appropriate CCLC rate.

The Commission will ask the ALJ to make a recommendation as to whether any or all of the following CCLC rates are consistent with Minnesota Statutes § 237.12, subdivision 3:

- (i) a CCLC of zero,
- (ii) a CCLC for all LECs equivalent to the present originating CCLC of Qwest Corporation,
- (iii) a CCLC equivalent to interstate levels,
- (iv) a *de minimis* CCLC,
- (v) a CCL rate or rates proposed by a party to this proceeding, and
- (vi) any other CCLC.

V. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Steve M. Mihalchick. His address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 349-2544.

B. Hearing Procedure

Controlling Statutes and Rules

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at www.revisor.leg.state.mn.us.

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

Right to Counsel and to Present Evidence

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

Discovery and Informal Disposition

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Kevin O'Grady, Public Utilities Rates Analyst, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651)282-2151; or Steve Alpert, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 296-3258.

Protecting Not-Public Data

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

Accommodations for Disabilities; Interpreter Services

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

Scheduling Issues

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

Notice of Appearance

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

Sanctions for Non-compliance

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties and Intervention

Parties to this case are all local service providers, Minnesota Independent Coalition, the CLEC Coalition, AT&T, MCI, Sprint, the Minnesota Department of Commerce and the Residential and Small Business Utilities Division of the Office of the Attorney General. Persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

D. Prehearing Conference

The Commission requests that the ALJ convene a prehearing conference in this case no later than 60 days from the date of this Order. Persons participating in the prehearing conference should be prepared to discuss time frames, scheduling, discovery procedures, and similar issues. Potential parties are invited to attend the pre-hearing conference and to file their petitions to intervene as soon as possible.

E. Time Constraints

The Commission requests that the ALJ return a decision within six months of the prehearing conference, with the option of extending the time to a maximum of eight months if the parties indicate that they are making substantial progress on a settlement.

VI. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq., may apply to this case. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

VII. Ex Parte Communications

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. The Commission hereby refers this case to the Office of Administrative Hearings for contested case proceedings as set forth above.

2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), or 1-800-627-3529 (MN relay service).

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

In the Matter of a Commission Investigation of MPUC Docket No. P-999/CI-98-674
Intrastate Access Charge Reform P-999/R-97-609

DATE: _____